

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.337/2004

Monday this the 21st day of November, 2005

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

K.Govindaraj, aged 30 years
S/o K.Achuthan Nair,
Helper Grade I, Southern Railway,
Traction Distribution Unit, Trichur,
residing at Melottu House,
Poonkunnam MLA Road,
Kottur PO,
Trichur.Applicant

(By Advocate Mr. T.C.Govindaswamy)

V.

- 1 The Union of India, represented by the General Manager, Southern Railway, Headquarters Office, Park Town PO,Chennai.3.
- 2 The Chief Personnel Officer, Southern Railway, Headquarters Officers, Park Town PO, Chennai.3.
- 3 The Senior Divisional Personnel Officer, Southern Railway, Trivandrum Division, Trivandrum.14.
- 4 Sri.Rajeevan,
The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum.14.Respondents

(By Advocate Mr.Sunil Jose)

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The application having been heard on 2.11.2005 the Tribunal on 21. 11.2005 delivered the following:

ORDER

HO'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The Applicant has earlier filed O.A.973/03 seeking a direction to the respondents to assign him the seniority position of one Shri J.Victor Selvaraj, as per the provisions contained in Para 310 of the Indian Railways Establishment Manual (Volume I). The Applicant was working as Peon in Commercial Department, Railway Headquarters, Chennai and he was transferred as Helper Grade II of Traction Distribution Unit of Trivandrum Division on mutual transfer basis with the aforesaid Shri Victor Selvaraj and the Applicant joined the Trivandrum Division on 30.10.01. In the Provisional Seniority List of Traction Distribution Unit dated 2.11.01, his name did not appear but the name of Shri J.Victor Selvaraj was still shown. The Applicant filed the aforesaid O.A. while his representation dated 17.12.01 to Divisional Railway Manager (P), Trivandrum Division was pending. With the consent of the parties, this Tribunal disposed of the aforesaid O.A.973/03 vide order dated 21.1.04 (Annexure A7) directing the second respondent to consider the representation of the Applicant in the light of the rules in that regard and to give him an appropriate reply.

2. Pursuant to the aforesaid direction of this Tribunal, the respondents considered the representation of the Applicant and

passed the impugned Annexure A9 order dated 20.4.04 stated to be in accordance with rules pertaining to "transfer requests involving change of seniority unit". The respondents have stated that mutual transfers are normally between two homogeneous units and the rules of seniority are framed accordingly. The Applicant has joined the Divisional Office, Personnel Branch, Trivandrum on 30.10.01 on transfer with the change of department to another seniority unit with the mutual consent of two employees. Rules of normal mutual transfer cannot be applied in the present case as the Applicant has joined from one seniority unit to another seniority unit from the post of Peon to that of Helper to TRD Cadre. Therefore, the applicant's seniority has to be fixed based on the provisions of Para 2(5) of the Personnel Branch Circular No.90/96 which reads as under:

"2.5. The transfer on request from one unit to another is made with the assignment of bottom seniority only in the relevant grade on the date of joining the new unit irrespective of the length of service or seniority in the former unit and in spite of delay in the transfer if any whatever the cause may be."

3. The Applicant had challenged the aforesaid order dated 20.4.04 on the ground that in terms of Rule 230 of the Indian Railways Establishment Code read with Para 310 of the Indian Railway Establishment Manual, the respondents are bound to assign seniority of the applicant in the cadre of Helper Gr.II on Traction Distribution Unit of Trivandrum against the slot vacated by Shri Victor Selvaraj. The Applicant has also alleged that he was denied the

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appropriate seniority under pressure of the Southern Railway Employees Sangh. The applicant submitted that the refusal on the part of the 3rd respondent to assign applicant's seniority is therefore, totally arbitrary, discriminatory and contrary to law and hence violative of Articles 14 and 16 of the Constitution of India.

4. We have heard the learned counsels on either side. Before the mutual transfer as Helper Grade I, in the scale of pay of Rs. 2650-4000 in Traction Distribution Unit, Electrical Department of Southern Railway, Trivandrum Division, the Applicant was working as an Office Peon in the Headquarters Office, Commercial Department at Chennai. The Respondents have issued the Annexure A1 sanction of the Competent Authority dated 19.10.2001 granting the inter-divisional mutual transfer of the Applicant with Shri J. Victor Selvaraj, Helper II, TRD, CKI, TVC Division in change of category and one of the conditions of the said transfer was as under:

"The employees will take their seniority in the seniority units to which they are transferred as per extant orders applicable to mutual transfer, i.e., they will either retain their own seniority or take the seniority of the other in the new seniority units to which they are posted, whichever is lower."

4. Further, Rules 230 of the Indian Railway Establishment Code Vol. I and Para 310 of the Manual provide for transfer on mutual exchange which is as under:

"230: TRANSFER ON MUTUAL EXCHANGE:- In case of mutual exchange the senior of the two employees will be given the place of seniority vacated by the other person. The junior will be allowed to retain his former

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seniority and shall be fitted into the seniority below the persons having the same seniority.

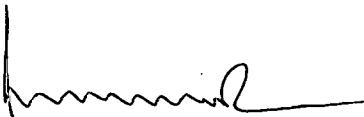
310: MUTUAL EXCHANGE: Railway servants transferred on mutual exchange from one cadre of a division, office or railway to the corresponding cadre in another division, office or railway shall have their seniority on the basis of the date of promotion to the grade or take the seniority of the railway servants with whom they have exchanged, whichever of the two may be lower."

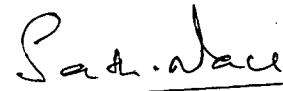
While the Respondents have sanctioned the mutual transfer of the Applicant with Shri J. Victor Selvaraj in charge of category was with the specific assurance that employees will take their seniority in the seniority units to which they are transferred as per extant orders applicable to mutual transfer, i.e., they will either retain their own seniority or take the seniority of the other in the new seniority units to which they are posted, whichever is lower. The Respondents cannot now go back from their aforesaid assurance and now say that Applicant's transfer is with change of Department to another seniority unit and his seniority will be governed by the provisions of Para 2(5) of the Circular No.90/96 (ibid). The Respondents are bound to abide by their own terms and conditions of transfer of the Applicant with Shri J. Victor Selvaraj, Helper Gr.II. We, therefore, quash and set aside the impugned order dated 20.4.2004. The O.A. is accordingly allowed. Resultantly, the Applicant is entitled to have his seniority assigned in the cadre of Helper Grade II of the Traction Distribution Unit, Electrical Department of Southern Railway/Trivandrum Division in accordance with condition No.4 of Annexure A1 order dated

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19.10.2001 read with Rule 230 of the Indian Railway Establishment Code and Para 310 of the Indian Railway Establishment Manual. We also, therefore, direct the Respondents to assign the seniority of the Applicant in the cadre of Helper Grade II as the one retained by Shri J.Victor Selvaraj before his mutual transfer in terms of Annexure A1 sanction dated 19.10.01. These directions shall be complied with, within a period of two months from the date of receipt of this order. There will be no order as to costs.

Dated this the 21st day of November, 2005


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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